

REMARKS

This Amendment cancels claims 16-19 and amends claim 1. The "partly cured" matrix feature of claim 1 is supported by page 3, lines 1-3. Figs. 1 and 3-5 support the "substantially cylindrical shape adapted to encircle a single tooth" feature of claim 1. Claims 1-9 are pending.

Examiners Mai and Wilson are thanked for the courtesies extended to the undersigned during a teleconference held November 12, 2008. The cancellation of claims 16-19, the amendment of claim 1 and the patentability of the claimed matrix band over the references were discussed. No agreement was reached during the interview.

The cancellation of non-elected claims 16-19 moots the restriction requirement. Reconsideration and withdrawal of the restriction requirement are respectfully requested.

The 35 U.S.C. § 103(a) rejection of claims 1-9 over U.S. Patent No. 6,039,569 to Prasad et al. in view of U.S. Patent No. 46,234,793 to Brattesani et al. is traversed. The claimed matrix band is substantially cylindrical, adapted to encircle a single tooth and comprises fibers and a matrix, at least a portion of said matrix being at least partly cured and at least partly uncured.

The cited combination of references fails to raise a prima facie case of obviousness against the claimed matrix band. Prasad et al. discloses an uncured¹ occlusal strip which is used to prepare dental bridges and crowns. An "occlusal" strip, by definition², is positioned between opposing dental structures rather than around a single tooth.

Examiner Mai suggested during the interview that Prasad et al.'s occlusal strip is "capable of" being used as a matrix band. However, whether a prior art structure is "capable of" being modified into the claimed structure is not the test for patentability.

The deficiencies of Prasad et al. are not remedied by the additional disclosure of Brattesani et al., which is cited to show typical thicknesses of a matrix band. Brattesani et al. discloses textured metal matrix bands which have a smooth interior surface and an exterior surface having at least a portion which is configured to provide increased friction, i.e., a "frictional

¹See Prasad et al., col. 5, lines 12-15.

²Occlusal - 1. Pertaining to occlusion or closure. In dentistry, pertaining to the contacting surfaces of opposing occlusal units (teeth or occlusion rings), or the masticating surfaces of the posterior teeth. Stedman's Medical Dictionary 1077 (25th Ed. 1990).

engagement surface", which is said to enable a dental wedge to hold the matrix band in place during dental procedures.

Brattesani et al. fails to provide any motivation, suggestion or apparent reason to fabricate Prasad et al.'s uncured occlusal strip into a substantially cylindrical matrix band adapted to encircle a single tooth, because the occlusal strip does not possess a frictional engagement surface.

Moreover, one of ordinary skill in the art would not consider using Prasad et al.'s uncured occlusal strip as a matrix band because it might be difficult to maintain the strip's desired shape and position during tooth repair, particularly when used with dental wedges such as those illustrated in Brattesani et al. See, for example, Figs. 1 and 16F. In short, those of ordinary skill in the art would not have a reasonable expectation that an uncured occlusal strip could successfully maintain its shape and position encircling a single tooth during a dental procedure in view of Brattesani et al.

Reconsideration and withdrawal of the obviousness rejection of claims 1-9 over Prasad et al. in view of Brattesani et al. are earnestly requested.

It is believed this application is in condition for allowance. Reconsideration and withdrawal of the sole rejection of claims 1-9, and issuance of a Notice of Allowance directed to those claims, are earnestly requested. The Examiner is urged to telephone the undersigned should she believe any further action is required for allowance.

The fee for a one month Extension of Time is being paid electronically today. It is not believed any additional fee is required for entry and consideration of this Amendment. Nevertheless, the Commissioner is authorized to charge Deposit Account No. 50-1258 in the amount of any such required fee.

Respectfully submitted,

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Enclosure:
Petition for Extension of Time